

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN RUSSOPOULUS, 97-A-1208,

Plaintiff,

-vs-

Correction Officer CATER, Correction  
Officer RYDZA, Correction Officer  
LEWALSKI, and Correction Officer  
JOHNSON,

Defendants.

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**DECLARATION**

**03-CV-0249(Sc)**

**Timothy Lewalski**, declares under penalty of perjury that the following is true and correct:

1. I am employed by the New York State Department of Correctional Services (“DOCS”) and currently hold the position of Sergeant at Sullivan Correctional Facility. During the time period of the events alleged in the Complaint in 2002, I was a Correction Officer at Attica Correctional Facility (“Attica”), regularly assigned to B-Block, Gallery 18, where plaintiff was housed.

2. This declaration is submitted in support of my Motion for Summary Judgment. I understand from my attorney that plaintiff John Russopoulus (97-A-1208) brought this law suit alleging that defendants violated his constitutional rights by deliberately allowing other inmates to assault him on February 14, 2002, February 28, 2002 and March 20, 2002 while he was housed in B-Block, Gallery 18. I also understand that plaintiff claims defendants retaliated against him as a result of his complaints concerning the alleged assaults.

3. Plaintiff’s allegations are incorrect. My attorney advised that plaintiff only reported the alleged assault on March 20, 2002 to medical staff. On that date, however, I had my regular day off so I was not in the facility. A copy of the Staff Planning Grid with the notations RDO indicating my regular day off is attached as Exhibit A. Consequently, I could not have been involved in any


been involved in any alleged assault on plaintiff by another inmate on March 20, 2002.

4. To the contrary, I have no personal knowledge of the claims alleged in the Complaint. Nor have I violated any constitutional rights of plaintiff as alleged in this action or even had any personal involvement with plaintiff.

5. In fact, plaintiff failed to even mention my name in his grievance attached to the Complaint. Therefore, plaintiff failed to exhaust his administrative remedies as to this claims against me. Moreover, I have been advised by my attorney that a search of Attica's files reveals that there is no mention of me in any of plaintiff's grievances or other complaints concerning this action which were provided in response to defendants' mandatory disclosure.

6. Based upon the foregoing, I respectfully request that the Court grant my Motion for Summary Judgment and the Amended Complaint against me be dismissed.

Executed on: May 11, 2006



Timothy Lewalski

Exhibit A



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN RUSSOPOULUS, 97-A-1208,

Plaintiff,

-VS-

Correction Officer CATER, Correction  
Officer RYDZA, Correction Officer  
LEWALSKI, Correction Officer  
JOHNSON, and Sergeant JOHN DOE,

**03-CV-0249A(Sc)**

Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, I electronically filed the foregoing Declaration with the Clerk of the District Court using its CM/ECF system.

And, I hereby verify that on May 12, 2006, I mailed the foregoing Declaration, by United States Postal Service, to the following non-CM/ECF participant at his last known address:

JOHN RUSSOPOULUS, 97-A-1208  
Elmira Correctional And Reception Center  
P.O. Box 500  
Elmira, NY 14902-0500

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